

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

THOMAS FLORENCE, #1729344	§	
	§	
VS.	§	CIVIL ACTION NO. G-11-134
	§	
OFFICER CLEMENTE GARCIA III	§	
and SGT. CHAPMAN	§	

ORDER

On April 10, 2014, Plaintiff, Thomas Florence, filed a Motion which appears to seek an Order from this Court amending the Judgment rendered against him in a state court criminal case and void his conviction because, according to Florence, there was no probable cause to support his arrest. The Motion seems to rely on Rule 59(e) of the Federal Rules of Civil Procedure.

This Court has no authority in this civil rights action to examine the basis of Florence's arrest or conviction. Moreover, Rule 59(e) has no application to a criminal proceeding; but even if it did, a Rule 59 (e) Motion must be filed "no later than 28 days after the entry of judgment." The only conceivable motion Florence could have filed would have been a motion to arrest judgment under Rule 34 of the Texas Rules of **Criminal** Procedure, but such a Motion had to be filed within 14 days after the judgment and was probably waived, unless Florence had filed an earlier Motion to Quash the Indictment on the basis now alleged. See Perez v. State, 590 S.W. 2d 474, 481 (Tex. Cr. App. 1979)

It is, therefore, **ORDERED** that Florence's "Motion for Leave of Court of File Rule 59(e) Evidence in Support of Court to Amend its Erroneous Judgment and to Order an Injunctive Hearing as Required on the TDCJ-BPP Illegal Issuance of Warrants" (Instrument no. 119) is **DENIED**.

It is further **ORDERED** that Florence's "Motion for Leave of Court to Move Court to Take Judicial Notice, Evidence Exhibit in Support of Plaintiff's Rule 59(e) Motion" (Instrument no. 117) is **DENIED**.

DONE at Galveston, Texas, this 11th day of April, 2014.



John R. Froeschner
United States Magistrate Judge